

## Filing at a Glance

Company: Seneca Insurance Company

Product Name: Seneca Tech E&O Forms Filing SERFF Tr Num: REGU-125178623 State: Arkansas

TOI: 17.1 Other Liability - Claims Made Only SERFF Status: Closed

State Tr Num: AR-PC-07-024653

Sub-TOI: 17.1001 Commercial General Liability Co Tr Num: SIC-AR-TECH-07

State Status:

Filing Type: Form

Co Status:

Reviewer(s): Michelle Fahey, Betty Montesi, Edith Roberts

Author: Jeremy Battles

Disposition Date: 07-11-2007

Date Submitted: 05-14-2007

Disposition Status: Approved

Effective Date Requested (New): On Approval

Effective Date (New):

Effective Date Requested (Renewal): On Approval

Effective Date (Renewal):

## General Information

Project Name:

Status of Filing in Domicile: Pending

Project Number:

Domicile Status Comments:

Reference Organization:

Reference Number:

Reference Title:

Advisory Org. Circular:

Filing Status Changed: 07-11-2007

State Status Changed: 05-14-2007

Deemer Date:

Corresponding Filing Tracking Number:

Filing Description:

Seneca Insurance Company has prepared forms for use with its Technology Errors and Omissions Program. This This program was designed to meet the unique insurance needs of businesses engaged in the sector of the technology industry that delivers electronic products, software or computer services.

Seneca is revising this programs Form 64-003 Technology Errors and Omissions Liability Protection Agreement Claims Made and its Form 64-004 Technology Common Policy Rules. A description of the revisions made to these forms is provided in the attached explanatory memorandum. Seneca has also provided marked-up versions (refer to the attached Exhibit I) of both endorsements. Seneca is also introducing a new Form 64-041 Copyright/Trademark Endorsement.

## Company and Contact

### Filing Contact Information

Jeremy Battles, Senior Analyst

jeremybattles@ircllc.com

50 Broad Street

(212) 571-3989 [Phone]

New York, NY 10004

() -[FAX]

**Filing Company Information**

Seneca Insurance Company  
160 Water Street

New York, NY 10038  
(212) 344-3000 ext. [Phone]

CoCode: 10936  
Group Code: 158

Group Name:  
FEIN Number: 13-2941133  
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State of Domicile: New York  
Company Type: Property &  
Casualty  
State ID Number:

## Filing Fees

Fee Required? Yes  
Fee Amount: \$50.00  
Retaliatory? No  
Fee Explanation:  
Per Company: No

CHECK NUMBER	CHECK AMOUNT	CHECK DATE
8824	\$50.00	05-11-2007

## Correspondence Summary

### Dispositions

Status	Created By	Created On	Date Submitted
Approved	Edith Roberts	07-11-2007	07-11-2007

### Objection Letters and Response Letters

Objection Letters				Response Letters		
Status	Created By	Created On	Date Submitted	Responded By	Created On	Date Submitted
Pending	Edith Roberts	05-30-2007	05-30-2007	Jeremy Battles	06-04-2007	06-04-2007
Industry						
Response						

## Disposition

Disposition Date: 07-11-2007

Effective Date (New):

Effective Date (Renewal):

Status: Approved

Comment: Dear Mr. Battles:

AID Order 2007-033, dated 7/09/07, has now been signed by the commissioner, which will allow exemption for technology products with a \$1,000,000 minimum limit of liability and a signed consent form by the insured acknowledging limits may be reduced or exhausted in payment of defense.

I am now approving this filing for you. Thank you for the additional amendments including in your response.

Have a great day.

Edith

Rate data does NOT apply to filing.

Item Type	Item Name	Item Status	Public Access
Supporting Document	Uniform Transmittal Document-Property & Casualty	Approved	Yes
Supporting Document	Cover Letter, Authorization, Explanatory Memo, Exhibit I	Approved	Yes
Form	Technology Errors and Omissions Liability Protection Agreement - Claims Made	Approved	Yes
Form	Technology Common Policy Rules	Approved	Yes
Form	Copyright/Trademark Endorsement	Approved	Yes

## Objection Letter

Objection Letter Status Pending Industry Response

Objection Letter Date 05-30-2007

Submitted Date 05-30-2007

Dear Jeremy Battles,

This will acknowledge receipt of the captioned filing.

This policy contains defense within the limits of liability. Currently, we do not have an exemption for Technology E & O from compliance with AR Code Anno 23-79-307 (5) (A), which requires defense outside the limit of liability. There is an exemption request pending, if you wish to wait and I will keep you posted as to the disposition. I do not anticipate that it will be declined.

Also, with reference to Form 64-003 (06/07) this provision does not comply with AR Code Anno 23-79-306 (1-6). The policy must indicate that the insurer must provide at no additional charge an automatic sixty (60) day basic Extended Reporting Period upon cancellation or termination for any reason including non-payment of premium, deductibles or excess payments over the limit of liability reimbursements.

You must advise the insured of the importance of purchasing the supplemental extended reporting period endorsement and allow the insured sixty (60) days after termination for any reason, to request and pay for the optional extended reporting period endorsement pursuant to AR Code Ann. 23-79-306 (3). This coverage must be put into effect if premium is received in payment of the optional extended reporting period endorsement.

The limit of liability for the supplemental extended reporting period must be no less than the greater of the amount of coverage remaining in the expiring policy aggregate or fifty percent (50%) of the aggregate limit at policy inception.

Please feel free to contact me if you have questions.

Sincerely,

Edith Roberts

## Response Letter

Response Letter Status Submitted to State

Response Letter Date 06-04-2007

Submitted Date 06-04-2007

Dear Edith Roberts,

Comments:

### Response 1

Comments: Dear Ms. Roberts:

This submission is in response to your May 30th objection letter regarding File # AR-PC-07-024653.

After reviewing your objections, it seems that both of these objections were raised you in 1/13/05 e-mail to regarding the initial program filing, which you approved on 1/19/05 under File # SIC-AR-TECH-F-04. I have provided these responses (language has been revised slightly) from my 1/13/05 response below:

1. You cited the initial program filing for having defense within limits. Seneca responded by confirming that they will be complying with AID Order 2000-169 by keeping a minimum limit of liability of \$1,000,000, so that they are able to keep defense expenses within the limit of liability. We trust that this addresses objection # 1 in your 5/30/07 inquiry.
2. The initial program filing included amendatory endorsement Form AR 64-001 Arkansas Changes which revised the policys Automatic ERP provision so that there are no exceptions to this provision. Seneca currently has a 90 day (as opposed to 60 days) extension provided by this Automatic ERP.

Within the initial programs 1/13/05 response to you, Seneca also addressed AR Code Ano 23-79-306 by withdrawing the two Option To Extend Reporting Period Endorsements (Forms 64-024 and 64-025) in the initial program filing and replacing them with Arkansas-specific versions (Forms AR 64-002 and AR 64-003). These AR-specific endorsements contained language that clarified that the optional ERPs begin once the 90 day automatic ERP has ended.

Should you need any additional information or have any questions, please do not hesitate to contact me at the numbers or e-mail address listed below.

Sincerely,

Jeremy W. Battles  
Insurance Regulatory Consultants, LLC  
(212) 571-3989 (phone); (212) 571-2502 (fax)  
jeremybattles@ircllc.com (e-mail)

No Supporting Documents have changed.

No Form Schedule items changed.

No Rate/Rule Schedule Item Changes

Sincerely,  
Jeremy Battles



## Form Schedule

Review Status	Form Name	Form #	Edition Date	Form Type Action	Action Specific Data	Readability	Attachment
Approved	Technology Errors and Omissions Liability Protection Agreement - Claims Made	64-003	06/07	Policy/Coverage Replaced Form	64-003 (06/04)	0.00	Protection Agreement-07.pdf
Approved	Technology Common Policy Rules	64-004	06/07	Policy/Coverage Replaced Form	64-004 (06/04)	0.00	Common Policy Rules-07.pdf
Approved	Copyright/Trade mark Endorsement	64-041	06/07	Endorsement New/Amendment/Conditions		0.00	Copyright Trademark End-07.pdf

# SENECA INSURANCE COMPANIES

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## TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT –CLAIMS MADE

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This Protection Agreement provides insurance in which the costs of defending *suits* reduce the *limits of coverage*. Except as otherwise provided, this insurance applies only to *claims* first made and reported in writing to *us* during the *policy period*, arising from an *error*, but only if the *error* occurs on or after the *retroactive date* and prior to the end of the *policy period*. *Retroactive date* means the date specified as such in the Technology Policy Declarations. Words and phrases in italics, if they are not defined in this protection agreement, may be defined in the Technology Common Policy Rules.

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### Coverage

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We will pay amounts any *protected entity* is legally obligated to pay as *damages* as a result of *claims* made and reported in writing to *us* in accordance with the "When This Agreement Covers" section of this Protection Agreement. The *damages* must have resulted from an *error* which first caused damages during or after installation, testing and final acceptance by the user of *your* electronic product, software or *computer service*.

"Error" means negligent acts, errors or omissions in the design or implementation of *your* electronic products, software or *computer services*, committed in the course of *your* business activities.

"Business activities" means developing, manufacturing, distributing, selling, licensing, maintaining or handling electronic products, software or *computer services*, but only where such activities are performed for persons or entities other than *you*. Computer services means:

- Systems analysis, designing, programming, data processing, consulting, outsourcing, system integration and information services in relation to computer hardware or software and training in the use of such hardware or software, including any such computer hardware or software designed or intended to prevent a *network security violation*;
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software and training in the use of such hardware or software;
- Provision of telephone services including switching services, dial tone access, and competitive access providers;
- Provision of cellular and wireless communication services including satellite communications;
- Provision of cable television and cable communication services;
- Provision of access to or services on the electronic media commonly known as the Internet or the Worldwide Web;
- Design and implementation of interactive media, including but not limited to CD ROM, Laser Disc Video, and Interactive Kiosks;
- Electronic, Video tape, and print publishing, and the related researching, preparation, republication, serialization, exhibition, or distribution of such material by others;
- Graphic design and marketing communication services;
- Designing, implementing and servicing teleconferencing and audio visual equipment, systems and software;
- Document imaging and related document storage, retrieval, and management services.

"Claim" means a request or demand for payment of *damages* resulting from an *error*, and includes any *suit* resulting therefrom. A *claim* will be deemed to have been made when written notice of the *claim*, is first received by a *protected entity* or by *us*, whichever occurs first.

## Right and duty to defend

We will defend *protected entities* in any *suit*, requesting covered *damages*, as more fully described in the section of this agreement entitled “Defense of Claims or Suits”. We may investigate and settle, at *our* discretion, any *claim* or *suit*.

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## Exclusions – What This Agreement Will Not Cover

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### Bodily injury

We will not cover damages for *bodily injury*.

### Emotional distress

We will not cover damages for *emotional distress*.

### Personal injury

We will not cover *damages* for *personal injury*.

### Advertising injury

We will not cover *damages* for *advertising injury*.

### Property damage

We will not cover *damages* for *property damage*. However, this exclusion will not apply to the loss of use of tangible property that is not physically damaged when the loss of use results from the failure of *your* electronic products, software or *computer services* to live up to *your* warranties, representations or promises.

### Professional services

We will not cover *damages* arising from the performance of or failure to perform any other professional services, even when those services are incorporated into *your* electronic products, software or *computer services*. This includes professional services such as those performed by architects, surveyors, health care providers, accountants, and lawyers.

### Public Access to Content Material

We will not cover *damages* arising out of *content material* which is input, published, or posted on your “Home Page”, or your area of the Internet or Worldwide Web, including, but not limited to, “chat rooms” or “bulletin boards” or “discussion areas”, or other similar areas where input is or can be received from the public at large and you have no prior knowledge as to the source of the content material. Content material means any image, picture, word or words, data, code, or any other input whose source is from the public at large and not controlled by *you*.

### Obligations to employees

We will not cover *damages* for any obligations of any *protected entity* under workers compensation, disability benefits, unemployment compensation, or any similar laws.

### Claims by protected entities

We will not cover any *claim* brought by a *protected entity* against another *protected entity*.

### Intentional acts

We will not cover *damages*, which result from an act or failure to act, which the *protected entity* knew, might result in a *claim*. Such circumstances include, but are not limited to, withdrawal of an electronic product, software or *computer service* from the market; or discontinuation of support for an electronic product, software or *computer service*.

### Dishonest acts

We will not cover *damages* arising from the dishonest, fraudulent, criminal, malicious or reckless act or omission of any *protected entity* whether acting alone or in collusion with anyone else.

### Violation of trade law

We will not cover *damages* arising from any alleged or actual violation of securities, antitrust, restraint of trade, unfair trade practice, or other consumer and/or competitive protection statute.

### Intellectual property

We will not cover *damages* arising from actual or alleged infringement of any intellectual property rights, including copyright, patent, trade secrets, trademark, trade name, trade dress, or other intellectual property rights, privileges, or laws.

**Discrimination**

We will not cover *damages* arising out of discrimination based on race, color, religion, sex, age, gender, sexual orientation, disability, handicap, pregnancy, national origin or ethnicity.

**Bankruptcy**

We will not cover *damages* arising out of the bankruptcy or insolvency of any *protected entity*.

**Liability of others**

We will not cover *damages* for liability of others any *protected entity* assumes under any contract or agreement unless the *protected entity* would have had the liability in the absence of such contract or agreement.

**Warranties, representations and promises**

We will not cover *damages* for return or refund of all or any part of payments made to *you* by *your* customers. Also, we will not cover costs and expenses *you* incur to comply with any warranties, representations or promises for *your* electronic products, software or *computer services*, including repair or replacement of defective materials or workmanship. Nor will we cover costs *you* incur associated with system modification, product re-design, correction of product errors, and product recall, withdrawal or inspection.

**Penalties, liquidated damages, or cost guarantees**

We will not cover *damages* for the payment of liquidated *damages* or penalties *you* agreed to pay *your* customer in the event of incidents such as late delivery. We also will not cover *damages* resulting from the fact that *you* exceeded any cost guaranties or estimates.

**Other liability protection**

We will not cover claims that are covered under any other Liability Insurance Policy.

**Pollution**

As stated in the Technology Common Policy Rules we will not cover any *claims* excluded in the *Pollution* exclusion, even if caused by or contributed to by an *error*.

**Nuclear energy liability**

As stated in the Technology Common Policy Rules, we will not cover any *claims* excluded in the Nuclear Energy Liability exclusion, even if caused by or contributed to by an *error*.

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**Defense of Claims or Suits**

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We will have the duty to make only the payments shown below in connection with any *suit* we defend.

Each payment of *claims expense* reduces the *limits of coverage*. Our duty to pay *claims expense*, and therefore *our* duty to defend, ends when we have used up the *limits of coverage* that apply with any combination of payment for judgments, settlements and *claims expense*.

"Claims expense," means those payments we make pursuant to *our* duty to defend, as set forth below.

**Costs of defense**

When we control the defense of a *suit* we will pay all expenses we incur, including attorneys' fees. But we will not provide or pay for separate or additional legal counsel for any *protected entity*, even where some portions of a *claim* are not covered, or may not be covered, by this agreement.

In any case, we will not pay for legal counsel that any *protected entity* retains without *our* written consent.

We have the right to control the defense of any *suit* while we are paying any *claims expenses*. If at any time we both agree, or if a court orders *you* to take over control of such defense before the applicable *limit of coverage* has been used up, we will reimburse *you* for reasonable attorneys' fees for the defense of covered *claims*. But we still will not pay more in total than the *limit of coverage* that applies.

As soon as practicable after *we* become aware that *your limit of coverage* may be used up in defense of a *suit* *we* will do the following:

- Notify *you* of any outstanding *claims* or *suits* so that *you* can arrange to take over control of the defense, and
- Assist in the transfer of control for such defense.

While the transfer of control of the defense is taking place, *we* will take steps on *your* behalf that *we* feel are appropriate to avoid default in a *suit*, or to continue the defense of such *suit*. *You* agree that if *we* take such steps, *we* do not give up or waive any of *our* rights. *You* also agree to reimburse *us* for any *claims expense* *we* incur in excess of the *limit of coverage*.

#### **Bonds to release property**

*We* will pay the cost of bonds to release property of a *protected entity* that is being used to secure a covered legal obligation, but only for bond amounts within the applicable *limits of coverage*. *We* are not obligated to apply for or furnish such bonds, or to provide the collateral in support of such bond.

#### **Expenses incurred by a protected entity**

*We* will pay all reasonable expenses that a *protected entity* incurs at *our* request while helping *us* investigate or defend a *claim* or *suit*. But *we* will not pay more than \$250 per day for earnings actually lost by any *protected entity* because of time lost from work.

#### **Taxed costs**

*We* will pay all costs for covered *claims* taxed against a *protected entity* at the conclusion of a *suit*.

#### **Pre-judgment interest**

*We* will pay pre-judgment interest awarded on the covered portion of a judgment.

#### **Post-judgment interest**

*We* will pay post-judgment interest that accrues on the covered portion of a judgment. But *we* will pay only the amount of interest accruing from the date of the judgment to the date *we*

- Pay;
  - Offer to pay; or
  - Deposit in court;
- the covered amount.

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### **Other Provisions Relating to Defense of Claims or Suits**

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#### **Arbitration**

*We* are entitled to exercise all of a *protected entity's* rights in the choice of arbitrators and the conduct of any arbitration proceeding.

#### **Special verdicts**

In any *suit*, even if *we* are not controlling the defense, *we* have the right to request a special verdict in lieu of a general verdict.

#### **Recovery from employees**

*We* will not use *your* Right of Recovery, as explained in the Technology Common Policy Rules, against any of *your* employees, unless *we* believe the employee has intentionally caused harm.

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### **When This Agreement Covers**

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*We* will cover *claims* first made against *you* while this agreement is in effect, if during the *policy period* *you* give *us* written notice of the *claim*. *We* will also cover *claims* first made against *you* after this agreement ends as provided in the Automatic Extended Reporting Period Section of this agreement.

Further, coverage only applies if no *protected entity* had reason to believe, at the start of the *policy period*, that it was possible that the *claim* would be made. Without limitation, such knowledge will be presumed if: a *protected entity* had received a complaint about an *error* which had caused, or foreseeable could cause, *damages*; a customer stopped paying *you*, threatened to stop paying *you*, or asked for a refund of payments; a person or entity indicated that copies of correspondence, regarding alleged *errors*, were being sent to legal counsel.

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## Where This Agreement Covers

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*We cover errors that happen anywhere in the world, but only if the suit is brought within the Coverage Territory.*

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## Who Is Insured Under This Agreement

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### Individual

If *you* are named in the Declarations as an individual, *you* and *your* spouse are a *protected entity*. But only with respect to the conduct of a business of which *you* are the sole owner.

### Partnership or joint venture

If *you* are named in the Declarations as a partnership or joint venture, *you* are *protected entities*. *Your* members, partners or co-ventures are *protected entities* only with respect to the conduct of *your* business.

No person or organization is a *protected entity* for the conduct of any current or past partnership or joint venture that is not named in the Declarations.

### Corporation or other organization

If *you* are named in the Declarations as a corporation or other organization, *you* are a *protected entity*. *Your* executive officers and directors are *protected entities*, but only with respect to their duties as *your* officers or directors. *Your* stockholders are *protected entities*, but only with respect to their liability as *your* stockholders.

### Employees

*Your* employees, agents, and sub-contractors are *protected entities* only for work done within the scope of their employment by *you*. *We* will not cover *claims* or *suits* brought against *your* employees, agents, and sub-contractors by *you* or by other employees, agents, and sub-contractors.

### Automatic Additional Protected Entities

Any person or organization for whom *you* are providing *computer services* in the course of *your business activities*, is a *protected entity*, when *you* and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on *your* policy. Such person or organization is an additional insured only with respect to liability arising out of *your* ongoing *business activities* for that insured. A person's or organizations status as an insured ends when *your business activities* for that insured are completed.

### Legal representatives

*We* will protect the following representatives of a *protected entity*

- The estate, legal representative or heirs of a deceased person, or
- The legal representative of a *protected entity* who is legally bankrupt or mentally incompetent;

but only in their capacity as such.

### Newly acquired organizations

Any organization that *you* acquire or form while this agreement is in effect, other than a partnership or joint venture, is a *protected entity* if *you* own at least 51% of it.

However, no such newly acquired or formed organization is a *protected entity* under this agreement for:

- More than 120 days, or the remainder of the *policy period*, whichever is less, from the date that *you* acquire or form it, or
- *Damages* covered under any other insurance.

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## Limits Of Coverage

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The limits shown in the Declarations, subject to this section, are the most *we* will pay regardless of the number of:

- *Protected entities*;
- *Claims* made or *suits* brought; or
- Persons or organizations making *claims* or bringing *suits*.

This agreement applies:

- To each *protected entity* named in the Declarations as if that person or organization were the only one named there, and
- Separately to each other *protected entity*.

However, the *limits of coverage* shown in the Declarations are shared by all *protected entities*. Also, any right or duty specifically assigned to the *first named insured* remains unchanged. *We* explain those rights and duties in the Technology Common Policy Rules.

### Each claim limit

This is the most *we* will pay for all *claims* resulting from a single *error* or from a series of related *errors*, no matter how many *protected entities*, injured parties, or *claims* are involved. This includes all *claims expenses*.

### Aggregate limit

This is the most *we* will pay for all *claims* first made during the *policy period*, including *suits* resulting therefrom. This includes *claims expenses*.

*We* will treat any *claims* that result from a series of related *errors*, even if they are made during more than one *policy period*, as a single *claim*. The *claim* will be subject to the *limit of coverage* set forth in the agreement in effect at the time of the first *claim* resulting from a series of related *errors*.

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## Deductible

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The deductible is shown in the Declarations. *You* will be responsible for any payments, up to the amount of the deductible, for each *claim*. This includes *claims expenses*. *We* will only apply the deductible once for all *claims* resulting from a single *error* or from a series of related *errors*. *We* will then pay covered *claims* over the deductible amount, up to the *limit of coverage*. At *our* option *we* can pay all or part of the deductible to settle a *claim*. If *we* do, each *protected entity* agrees to repay *us* as soon as *we* notify *you* of the settlement.

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## Automatic Extended Reporting Period

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An automatic Extended Reporting Period will apply only if this agreement ends because: *we* or *you*, choose to cancel or non-renew this agreement for reasons other than misrepresentation or non-payment of premium; or *we* renew or replace this agreement with other claims-made insurance that has a *retroactive date* later than that one shown in the Declarations.

*We* will provide coverage for *claims* first made within one year after this agreement ends. However, coverage under this Automatic Extended Reporting Period applies only if all of the following conditions are met:

- The *error* occurred during the *policy period*;
- The *protected entity* involved was first aware of a possible *error* during the *policy period*, or within 90 days after it ended;

- Within 90 days after the agreement ends, *you* notify *us*, in writing, of the possible *error*. Such written notice must include the following information:
  1. The actual or alleged *error* or circumstance which is the subject of a possible *claim*;
  2. Identification of the specific services rendered or product(s) failed, which gave rise to (1) above;
  3. The date(s) of such *error* or omission;
  4. The consequential damage which has or may result from such *error* or omission
  5. The identity(ies) of the *protected entities* who may be subject of the claim;
  6. The identity(ies) of the potential claimant(s);
  7. The anticipated location(s) of any such *claim*, and
  8. The circumstances by which *you* first became aware of the potential *claim*.

Coverage provided by the Automatic Extended Reporting Period will be excess over any other insurance available to *you*, whether collectible or not, whose *policy period* begins or continues after this *policy* ends, whether that insurance is primary, excess, or contingent on any basis.

*Claims* made pursuant to this Automatic Extended Reporting Period will be deemed to have been made on the last day of the *policy period* for the purposes of determining the *limits of coverage*.

The Automatic Extended Reporting Period cannot be canceled.

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## Other Insurance

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This insurance is intended to be primary, except where stated otherwise.

When this insurance and other insurance both apply to a loss on the same basis, whether that basis is primary or contingent, *we* will pay no more than *our* percentage of the total amount of insurance covering the *claim*. For example:

The *limit of coverage* under this agreement is \$1,000,000. Another insurance policy with a limit of \$500,000 also covers a *claim* covered by this agreement. The total limits of all insurance are \$1,500,000. A court requires *you* to pay *damages* of \$2,000,000. *We* would pay 67% (\$1,000,000/\$1,500,000) of the judgment, but because that share (\$1,340,000) is greater than our *limit of coverage*, *we* will pay only the remaining portion of *our limit of coverage*, which is a maximum of \$1,000,000.



# SENECA INSURANCE COMPANIES

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## TECHNOLOGY COMMON POLICY RULES

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These rules apply to the entire *policy*.

Whenever a word or phrase is printed in italics, that word or phrase is defined somewhere in this *policy*.

"Policy" means this entire package of insurance, bearing a single Policy Number.

"We," "us," and "our" means the company issuing this *policy*.

"You" and "your" means the persons, people and organizations named as insured in the Technology Policy Declarations.

"Protected entity" means *you* and any other person or legal entity entitled to coverage under this *policy*.

### First Named Insured

"First Named Insured" means the first insured entity shown on the Technology Policy Declarations. Only the *first named insured* has the authority and responsibility, on behalf of itself and all other *protected entities*, to:

- Pay premiums or receive refunds of premiums;
- Cancel the policy or receive Notice of Cancellation;
- Change the *policy* including, but not limited to, the addition or deletion of coverage and/or *protected entities*.

All such changes are binding on all other *protected entities*.

### The Policy Period

Coverage under this *policy* begins at 12:01 a.m., standard time, on the effective date shown on the Technology Policy Declarations. If this *policy* replaces another policy expiring on the same date this *policy* becomes effective, coverage begins at the time that the replaced policy expires. All changes to this *policy* are effective as of 12:01 a.m. on the effective date stated thereon.

Coverage under this *policy* ends at 12:01 a.m., standard time, on the expiration date of this *policy*. If all or part of this *policy* is canceled for any reason before that date, coverage will end at 12:01 a.m., standard time, on the date cancellation is effective.

"Policy period" means the period between the time coverage begins and the time coverage ends.

### Assignment And Transfers

The rights and duties of any *protected entity* under this *policy* may not be assigned or transferred without *our* written consent attached to the *policy*. However, if *you* are a person, and *you* die, *your* rights and duties will be transferred to *your* legal representative, but only while acting within the scope of duties as *your* legal representative. Until *your* legal representative is appointed, anyone having temporary custody of *your* property will have *your* rights and duties concerning that property.

## **Our Right To Examine Your Records**

*You* agree to let *us* examine and audit *your* financial books and records that relate to this *policy* at any time up to 3 years after this *policy* ends.

## **Inspections And Surveys**

*We* have the right, but not the obligation, to inspect *your* property and business operations during normal business hours while this *policy* is in force. By conducting such investigation, *we* do not become responsible to advise *you* or to guarantee *you* that *your* property or business operations are safe or healthful or that they conform to any laws, codes, standards or regulations. Any inspections, surveys, reports or recommendations *we* make only relate to our determination of insurability and help *us* decide what premiums to charge. *We* do not make safety inspections or undertake to perform any duty of persons or organizations that provide for the health or safety of workers or the public. This rule also applies to any organization, which makes insurance inspections, surveys, reports or recommendations for *us*.

## **Premium And Audit**

This *policy* may be issued based upon estimated premiums. *You* must keep accurate records of the information *we* will need to compute *your* premium. *Your* broker can explain the type of records *we* will need. The *first named insured* agrees to send copies of these records to *us* at the end of each *policy period* - or at any other time *we* request them.

*We* will compute the earned premium *you* pay for this *policy* after the end of the *policy period* when complete information is available. If the earned premium is less than the premium *you* paid, *we* agree to return the excess premium. If the earned premium exceeds the estimated premium, *you* agree to pay that additional premium upon *our* notice to *you*. *You* will pay no less than the minimum annual premium agreed-on.

## **Liberalization**

Occasionally *we* make changes in *our* standard policy forms. These changes must conform to state law and are subject to prior approval by insurance supervisory authorities in each state. If *we* make a change while *your* coverage is in force that broadens or extends *your* coverage, and the change can be added to *your policy* without increasing the premium, *you* will automatically receive the broadened or extended coverage on the day the change is effective in *your* state.

## **Cancellation**

The *first named insured* can cancel this *policy* in whole or part at anytime by sending *us* a written request or by returning the *policy* to *us* with instructions specifying the date of cancellation.

*We* can cancel this *policy* in whole or in part at any time. To do so *we* will mail or deliver a Notice of Cancellation to the *first named insured* at least 60 days before coverage will end; but only 10 days before coverage will end if *we* are canceling for nonpayment of premium. *Our* notice will be mailed to the *first named insured's* last mailing address known to *us*, indicating the date coverage is to be canceled. Evidence of mailing such notice will be considered proof *you* were notified on the date of such mailing.

If this *policy* is cancelled, *we* will send the *first named insured* any premium refund due. If *we* cancel, the refund will be pro rata. If the *first named insured* cancels, the refund may be less than pro rata.

## **Our Right To Recover Damages From A Third Party**

Any *protected entity* under this policy for whom *we* make a payment must preserve, and at *our* request transfer to *us*, the right to recover all or part of a loss from any other party. After a loss, each *protected entity* must do all that is possible to preserve any right of recovery available to *us*. If *we* recover more than *we* have paid, plus the amount of *our* recovery expenses, the excess will belong to the *first named insured*.

However, *we* will not exercise *our* right to request transfer to *us*, the right to recover all or part of a loss from any other party, where such a waiver is required by a written contract signed by any *protected entity* and is related to *your business activities*.

## Bankruptcy

Bankruptcy or insolvency of any *protected entity* will not relieve *us* of any obligation under this *policy*.

## Fraud And Misrepresentation

This *policy* is void if any *protected entity* misled *us*, hid important information from *us*, or lied to *us* about any matter when applying for this *policy*. If any *protected entity* misleads *us*, hides important information from *us*, or lies to *us* about any matter concerning a *loss*, this *policy* will not cover that *loss*. However, unintentional errors or omissions will not affect *your* rights under this *policy*.

## Additional Definitions

"Advertising" means statements disseminated in a publication or broadcast to numerous persons for the purpose of seeking customers or increasing sales or business.

"Advertising injury" means *injury* caused by any of the following *offenses* that arise from the *advertising* of *your* products or *your* work:

- Libel or slander;
- Written or spoken material that belittles the products or work of others;
- Written or spoken material made public which violates an individual's right of privacy; or
- Use of any *advertising* material, title or slogan without consent of the owner thereof.

"Bodily injury" means any harm to the physical health of others, including sickness and disease, caused by an *occurrence*. It also includes care, loss of services or death arising at any time from such harm.

"Coverage Territory" means the United States of America, its territories and possessions, Puerto Rico and Canada.

"Damages" means compensatory monetary damages. *Damages* does not include restitution, or any other demand or remedy for return of monies previously received by any *protected entity* from the claimant.

"Emotional distress" means emotional distress, mental duress, and every other mental, emotional or psychic harm to a person, which does not result from physical injury to a person.

"Injury" means *bodily injury*, medical expenses, *personal injury*, *advertising injury*, *property damage* or fire, lightning, or explosion damage.

"Limits of Coverage" means the amount of insurance coverage, which is available under a specific protection agreement, as defined in each protection agreement.

"Loss" means any *occurrence*, accident, offense, *error*, *damage*, *claim*, *injury* or *damage*, or *suit*.

"Network Security Violation" means a breach of security, whereby an unauthorized person or entity, gains access to electronic data or other electronic content such as sounds or images, and *damages* result from such data or other electronic content being modified, destroyed, or disclosed. A *network security violation* includes the unauthorized introduction of a computer virus or other malicious code which affects such data or other electronic content and results in *damages*.

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

"Personal injury" means *injury* or *damages* caused by any of the following offenses that arise from *your business activities*:

- False arrest, detention, or imprisonment;
- Malicious prosecution;
- Wrongful entry or wrongful eviction or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies by or on behalf of its owner, landlord, or lessor;
- Written or spoken material made public, regardless of the media used, which disparages a person or organization, or which violates an individual's right of privacy, except that this will not apply to *damages* resulting from *network security violations*.

"Property damage" means physical damage to tangible property of others, including all resulting loss of use of that property; or loss of use of tangible property of others that is not physically damaged, but in either case, caused by an *occurrence*.

"Suit" means a civil proceeding in which *damages* are alleged. This includes arbitration proceedings for *damages*.

"Tort liability" means liability imposed by law in the absence of any contract or agreement.

"Your products" means any goods or products, other than real property, that *you* or others trading under *your* name manufactured, sold, handled, distributed or disposed of, including containers, materials, instructions, warnings, parts or equipment provided in connection with *your* goods or products, or those of any person or entity whose business or assets *you* have acquired. It includes warranties or statements made about the fitness, quality, safety, durability or performance of *your products*.

But *we* will not consider *your products* to include:

- Products that are still in *your* physical possession;
- Property rented to others; or
- Property you have not sold, but which *you* allow others to use.

"Your work" means work or operations performed by *you* or on *your* behalf, and materials, instructions, warnings, parts or equipment furnished in connection with such work or operations. It includes warranties or representations made at anytime with respect to the fitness, quality, safety, durability or performance of work or operations performed by *you* or on *your* behalf, and materials, parts or equipment furnished in connection with such work or operations.

## **Titles And Headings**

The titles and headings in this *policy* are included solely as a reference for convenience, and do not affect the scope of coverage.

## **Changes**

This *policy* constitutes the entire agreement between us concerning the insurance provided by *us*. This *policy* can only be changed by a written amendment made a part of the *policy* and signed by one of *our* authorized representatives.

## **Choice Of Law And Conformance**

This policy shall be interpreted according to the law of the state where this *policy* is issued, which is presumed to be the state shown on the Technology Policy Declarations as the mailing address of the *first named insured*. Any terms of this *policy* that conflict with the law of such state are automatically amended to conform to the law of that state.

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## COMMON POLICY EXCLUSIONS

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Except as expressly set forth to the contrary in any protection agreement, the following exclusions apply to the entire *policy*.

### **Pollution.**

We will not cover *loss* that arises from the actual, alleged or threatened discharge, dispersal, release, leakage, seepage, migration or escape of *pollutants* at or from:

- Any premises *you* own, rent, lease or occupy. It also includes premises *you* no longer own, rent, lease or occupy.
- Any site or location used, or being used, by or for *you* or others for the handling, storage, disposal, processing or treatment of waste; or
- Any site or location on which work is being performed by or for *you* when *pollutants* are brought on or to the site in connection with such work or the work is to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*.

We will not cover any *loss* arising from those *pollutants*, which are at any time transported or towed, handled, stored, treated, disposed of, or processed as waste by or for any *protected entity* or any person, or organization for which a *protected entity* is legally responsible. Nor will we cover any *loss*, including any cost or expense that result from any order or demand by anyone that any *protected entity* test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in anyway respond to or assess the effects of *pollutants*.

We also will not cover any *loss* arising from those *pollutants* which are at any time being transported or towed by an *automobile*, including loading and unloading or while being stored, disposed of, treated or processed in or on an *automobile*. "Automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, and *waste*.

"Waste" means materials to be disposed of, destroyed, recycled, reconditioned or reclaimed.

"Pollution" means the actual, alleged or threatened discharge, dispersal, release or escape of pollutants.

"Your premises" means any premises *you* owned, rented, leased or occupied at any time.

"Your work site" means any site or location on which work is being performed by or for *you* when *pollutants* are brought on or to the site in connection with such work; or if the work is to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*.

### **Nuclear energy liability.**

We will not cover any *loss*, or any portion thereof, arising from radioactive, toxic, explosive or other hazardous properties of *nuclear material*, *nuclear waste* or *spent fuel*.

"Nuclear material" means source material, special *nuclear material* or by-product material as defined under the federal Atomic Energy Act.

"Nuclear facilities" means any of the following:

- *Nuclear reactors*;
- Nuclear enrichment plants;
- Nuclear fuel or *spent fuel* handling or processing plants;

- A location prepared or used for handling, storage or disposing of *waste*;
- A location containing more than 25 grams of plutonium or uranium 233 combined or more than 250 grams of uranium 235.

"Nuclear waste" means *waste* from any of the first three types of *nuclear facilities* named above which contains by-product material.

"Nuclear reactor" means anything that can be used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Spent fuel" means any fuel element or component, whether solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.

We also will not cover any liability for which a *protected entity* is covered under a Nuclear Energy Liability Policy issued by a group such as:

- The American Nuclear Insurers;
- The Nuclear Energy Liability Insurance Association;
- The Mutual Atomic Energy Liability Underwriters; or
- The Nuclear Insurance Association of Canada.

Nor will *we* cover liability that would have been covered by a policy from a group listed above if its limit of coverage had not been used up.

This exclusion applies whether or not the *loss* is based on liability assumed under any contract or agreement.

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## **DUTIES IN THE EVENT OF ANY POTENTIALLY COVERED LOSS**

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If *you* are aware of a possible *error* or *claim*, *you* agree to notify *us* as soon as possible, even if a *claim* has not been made. In addition, *you* must:

1. Notify the police if a law may have been broken;
2. Notify *us* or *your* broker about what happened. *We* must be provided with details surrounding the actual or alleged *error* or circumstance which is the subject of a possible *claim*, the identity of *protected entity(ies)* involved, and the time and place of the actual or alleged incident;
3. Send or deliver to *us* copies of all demands or legal documents if someone makes a *claim* or *suit*;
4. Cooperate with *us* in making any investigation into the *claim* or *loss* that *we* deem necessary, including answering *our* questions and making available records and individuals with knowledge of the *claim* or *loss*. Also, *you* and any involved *protected entity* must cooperate with *us* in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses;
5. Not pay out any money or assume any financial obligation without *our* consent.

### **Legal Action Against Us**

No one can sue *us* to recover under this *policy* unless there has been full compliance with all the terms and conditions of this *policy*.

# SENECA INSURANCE COMPANIES

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## COPYRIGHT/TRADEMARK ENDORSEMENT

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This endorsement changes *your* Technology Errors and Omissions Liability Protection Agreement.

It is hereby agreed and understood that the exclusion titled **Intellectual Property** in the “**Exclusions-What This Agreement Will Not Cover**” section, is deleted in its entirety, and replaced with the following language:

*We* will not cover *damages*, costs or attorney fees, arising from any alleged or actual infringement of any intellectual property rights, including patent, trade secrets, or other intellectual property rights, privileges, or laws, except that, this exclusion will not apply to copyright, trademark, service mark, trade dress, or trade name.

The same limits of coverage apply to this endorsement as show on the **DECLARATIONS FOR TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT – CLAIMS-MADE** for this *policy*, and are part of and not in addition to the **Limits of Coverage** shown. This is the most we will pay for *damages*, costs, or attorney fees, as a result of a *claim* made for infringement of another's copyright, trade mark, trade dress, or trade name, regardless of the number of

- *Protected entities*;
- *Claims* or *suits* brought; or
- Persons or organizations making *claims* or bringing *suits*.

The following replaces the **Retroactive Date** shown on the **DECLARATIONS FOR TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT – CLAIMS-MADE** for each *claim* or for all *claims* resulting from a single *error*, or from a series of related *errors*, for *damages* as a result of a *claim* made for infringement of another's copyright, trade mark, trade dress, or trade name.

### **Retroactive Date:**

If no date is shown, *we* will consider the *retroactive date* applicable to this endorsement the same as the *retroactive date* shown on the **DECLARATIONS FOR TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT – CLAIMS-MADE**.

With respect to the coverage afforded by this endorsement, the following language is added to the **Newly Acquired Organization** section of the *policy*:

The *retroactive date* that applies to such newly acquired or formed organization will be the acquisition date or the date the organization was formed.

### **Other Terms and Conditions:**

All other terms and conditions of this *policy* remain unchanged.

*If issued after the date your policy begins, the spaces below must be completed and must be signed by our authorized representative.*

Policy issued to:

Effective Date:

Policy Number:

Authorized Representative:

## **Rate Information**

Rate data does NOT apply to filing.



## Supporting Document Schedules

		<b>Review Status:</b>				
<b>Satisfied -Name:</b>	Uniform Transmittal Document-Property & Casualty	Approved	07-11-2007			
<b>Comments:</b>						
<b>Attachment:</b>						
AR NAIC Transmittal.pdf						
		<b>Review Status:</b>				
<b>Satisfied -Name:</b>	Cover Letter, Authorization, Explanatory Memo, Exhibit I	Approved	07-11-2007			
<b>Comments:</b>						
<b>Attachments:</b>						
AR Cover Letter.pdf						
Seneca Filing Authorization Letter.pdf						
Explanatory Memorandum.pdf						
Exhibit I.pdf						

## Property & Casualty Transmittal Document

<b>1. Reserved for Insurance Dept. Use Only</b>	<b>2. Insurance Department Use only</b> a. Date the filing is received: b. Analyst: c. Disposition: d. Date of disposition of the filing: e. Effective date of filing: <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">New Business</div> <div style="width: 40%;"></div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Renewal Business</div> <div style="width: 40%;"></div> </div> f. State Filing #: g. SERFF Filing #: h. Subject Codes
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<b>3. Group Name</b>	<b>Group NAIC #</b>
Fairfax Financial Group	0158

4. Company Name(s)	Domicile	NAIC #	FEIN #	State #
Seneca Insurance Company	NY	10936	13-2941133	

<b>5. Company Tracking Number</b>	SIC-AR-TECH-07
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**Contact Info of Filer(s) or Corporate Officer(s)** [include toll-free number]

6. Name and address	Title	Telephone #s	FAX #	e-mail
Jeremy W. Battles, IRC 50 Broad St Suite 501 New York, NY 10004	Senior Analyst	(212) 571-3989	(212) 571-2502	<a href="mailto:jeremybattles@irc.com">jeremybattles@irc.com</a>

7. Signature of authorized filer	
8. Please print name of authorized filer	Jeremy W. Battles

**Filing information** (see General Instructions for descriptions of these fields)

9. Type of Insurance (TOI)	17.1 Other Liability - Claims Made
10. Sub-Type of Insurance (Sub-TOI)	17.1001 Commercial General Liability
11. State Specific Product code(s) (if applicable)[See State Specific Requirements]	N/A
12. Company Program Title (Marketing title)	Technology Errors & Omissions Program
13. Filing Type	<input type="checkbox"/> Rate/Loss Cost <input type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input checked="" type="checkbox"/> Forms <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other (give description)
14. Effective Date(s) Requested	New:    Upon Approval    Renewal:    Upon Approval
15. Reference Filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16. Reference Organization (if applicable)	N/A
17. Reference Organization # & Title	N/A
18. Company's Date of Filing	5/14/2007
19. Status of filing in domicile	<input type="checkbox"/> Not Filed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved

## Property & Casualty Transmittal Document—

**20. This filing transmittal is part of Company Tracking #** SIC-AR-TECH-07

**21. Filing Description** [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]

Seneca Insurance Company has prepared forms for use with its Technology Errors and Omissions Program. This program was designed to meet the unique insurance needs of businesses engaged in the sector of the technology industry that delivers electronic products, software or computer services.

Seneca is revising this program's Form 64-003 – Technology Errors and Omissions Liability Protection Agreement – Claims Made and its Form 64-004 – Technology Common Policy Rules. A description of the revisions made to these forms is provided in the attached explanatory memorandum. Seneca has also provided marked-up versions (refer to the attached Exhibit I) of both endorsements. Seneca is also introducing a new Form 64-041 Copyright/Trademark Endorsement.

**22. Filing Fees** (Filer must provide check # and fee amount if applicable)  
[If a state requires you to show how you calculated your filing fees, place that calculation below]

**Check #:** 8824  
**Amount:** \$50.00

**Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.**

**\*\*\*Refer to the each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)**

**FORM FILING SCHEDULE**

(This form must be provided ONLY when making a filing that includes forms)

**(Do not refer to the body of the filing for the forms listing, unless allowed by state.)**

<b>1.</b>	<b>This filing transmittal is part of Company Tracking #</b>	SIC-AR-TECH-07			
<b>2.</b>	<b>This filing corresponds to rate/rule filing number</b> (Company tracking number of rate/rule filing, if applicable)	N/A			
<b>3.</b>	<b>Form Name /Description/Synopsis</b>	<b>Form # Include edition date</b>	<b>Replacement or Withdrawn?</b>	<b>If replacement, give form # it replaces</b>	<b>Previous state filing number, if required by state</b>
01	Technology Errors and Omissions Liability Protection Agreement - Claims Made	64-003 (06/07)	<input type="checkbox"/> New <input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	64-003 (06/04)	
02	Technology Common Policy Rules	64-004 (06/07)	<input type="checkbox"/> New <input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	64-004 (06/04)	
03	Copyright/Trademark Endorsement	64-041 (06/07)	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
04			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
05			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
06			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
07			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
08			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
09			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
10			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		



Insurance Regulatory Consultants, LLC

filing on behalf of **SENECA INSURANCE COMPANY**

May 14, 2007

**Submitted within SERFF**

Honorable Julie Benafield Bowman  
Commissioner of Insurance  
Arkansas Insurance Department  
1200 West Third Street  
Little Rock, AR 72201

*Please be advised that Insurance Regulatory Consultants (IRC) has been appointed to submit this filing on behalf of **Seneca Insurance Company**. A copy of this authorization is attached to this filing.*

**Re: Seneca Insurance Company**  
**NAIC# 0158-10936; FEIN # 13-2941133**  
**Technology Errors and Omissions Program**  
**Forms Filing**  
**Company Filing ID Number: SIC-AR-TECH-07**  
**Proposed Effective Date: Upon Approval**  
**State of Arkansas**

Dear Commissioner Bowman:

Seneca Insurance Company is filing forms for use with its Technology Errors and Omissions Program. This program was approved in your state on 1/19/05 under File # SIC-AR-TECH-F-04. This program is designed to meet the unique insurance needs of businesses engaged in the sector of the technology industry that delivers electronic products, software or computer services.

Seneca is revising this program's Form 64-003 – Technology Errors and Omissions Liability Protection Agreement – Claims Made and its Form 64-004 – Technology Common Policy Rules. A description of the revisions made to these forms is provided in the attached explanatory memorandum. Seneca has also provided marked-up versions (refer to the attached Exhibit I) of both endorsements. Seneca is also introducing a new Form 64-041 Copyright/Trademark Endorsement.

The following items are enclosed for your review:

- Explanatory Memorandum
- Exhibit I (Mark-up Exhibit)
- Independent Forms

A check in the amount of **\$50.00** was sent to cover the required filing fee.

We ask that this filing become effective for all policies upon your approval.

Your early review and approval will be appreciated. Should you need any additional information or have any questions, please do not hesitate to contact me at the numbers or e-mail address listed below.

Sincerely,

Jeremy W. Battles  
Insurance Regulatory Consultants, LLC  
(212) 571-3989 (phone); (212) 571-2502 (fax)  
[jeremybattles@irccllc.com](mailto:jeremybattles@irccllc.com) (e-mail)



Seneca Insurance Company, Inc.  
Seneca Specialty Insurance Company, Inc.

DOUGLAS M. LIBBY  
President and  
Chief Executive Officer

### **LETTER OF FILING AUTHORIZATION**

This will certify that Insurance Regulatory Consultants, LLC (IRC) has been given full authorization to submit the captioned filing below on behalf of **Seneca Insurance Company, Inc.** This authorization extends to all correspondence regarding this filing.

**Douglas M. Libby**

Name

**May 1, 2007**

Date

**President & CEO**

Title

**Seneca Insurance Company, Inc.**

Company

Signature

**(212) 344-3000**

Telephone Number

**Re: Seneca Insurance Company, Inc.  
NAIC Number: 0158-10936  
Technology Errors & Omissions Program  
Forms Filing**

# SENECA INSURANCE COMPANIES TECHNOLOGY ERRORS AND OMISSIONS PROGRAM

## EXPLANATORY MEMORANDUM

Seneca's approved Technology Errors & Omissions Program is designed to meet the unique insurance needs of businesses engaged in the sector of the technology industry that delivers electronic products, software or computer services. Under this program, coverage is provided for errors or omissions in the design or implementation of these products in the course of the insured's business activities.

The following changes are being made to this program with this filing:

1. The following existing forms (06/04 editions):

- 64-015 MULTIMEDIA SERVICES ENDORSEMENT
- 64-014 TELECOMMUNICATIONS SERVICES ENDORSEMENT
- 64-026 SUB-CONTRACTORS ENDORSEMENT

are being incorporated into 64-003 TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT-CLAIMS MADE (06/07 EDITION)

2. 64-003 will also include the following changes:

- Coverage is added for a *Network Security Violation*
- Additional Insured coverage is added when required by written contract

3. 64-004 TECHNOLOGY COMMON POLICY RULES will have the following changes:

- Form 64-028 WAIVER OF OUR RIGHT TO RECOVER-WHERE REQUIRED BY CONTRACT has been incorporated into 64-004.
- Definition of *Network Security Violation* added
- Personal Injury is still excluded in 64-003, however, the definition of Personal Injury in 64-004 is changed as follows:

"Written or spoken material made public, regardless of the media utilized, which disparages a person or organization, or which violates an individual's right of privacy, except that this will not apply to *damages* resulting from *network security violations*."

4. Copyright Trademark

64-040 COPYRIGHT/TRADEMARK SUB-LIMITS ENDORSEMENT will still be utilized along with the current rating structure, however:

- 64-041 COPYRIGHT/TRADEMARK ENDORSEMENT is a new form and will provide Copyright/Trademark limits equal to the policy limits. As with 64-040, the new form will provide Copyright/Trademark limits as part of, not in addition to, the policy limits.

Rating for the new form will be the same as for the old form except that the additional premium for the Copyright/Trademark coverage will be based off of the full E&O limit premium offered, rather than being limited to the premium for the first \$1Million of E&O limit.

# SENECA INSURANCE COMPANIES

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## TECHNOLOGY ERRORS AND OMISSIONS LIABILITY PROTECTION AGREEMENT –CLAIMS MADE

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This Protection Agreement provides insurance in which the costs of defending *suits* reduce the *limits of coverage*. Except as otherwise provided, this insurance applies only to *claims* first made and reported in writing to *us* during the *policy period*, arising from an *error*, but only if the *error* occurs on or after the *retroactive date* and prior to the end of the *policy period*. *Retroactive date* means the date specified as such in the Technology Policy Declarations. Words and phrases in italics, if they are not defined in this protection agreement, may be defined in the Technology Common Policy Rules.

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### Coverage

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We will pay amounts any *protected entity* is legally obligated to pay as *damages* as a result of *claims* made and reported in writing to *us* in accordance with the "When This Agreement Covers" section of this Protection Agreement. The *damages* must have resulted from an *error* which first caused damages during or after installation, testing and final acceptance by the user of *your* electronic product, software or *computer service*.

"Error" means negligent acts, errors or omissions in the design or implementation of *your* electronic products, software or *computer services*, committed in the course of *your* business activities.

"Business activities" means developing, manufacturing, distributing, selling, licensing, maintaining or handling electronic products, software or *computer services*, but only where such activities are performed for persons or entities other than *you*. Computer services means:

- Systems analysis, designing, programming, data processing, consulting, outsourcing, system integration and information services in relation to computer hardware or software and training in the use of such hardware or software, including any such computer hardware or software designed or intended to prevent a network security violation.
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software and training in the use of such hardware or software.
- Provision of telephone services including switching services, dial tone access, and competitive access providers;
- Provision of cellular and wireless communication services including satellite communications;
- Provision of cable television and cable communication services;
- Provision of access to or services on the electronic media commonly known as the Internet or the Worldwide Web.
- Design and implementation of interactive media, including but not limited to CD ROM, Laser Disc Video, and Interactive Kiosks.



- Electronic, Video tape, and print publishing, and the related researching, preparation, republication, serialization, exhibition, or distribution of such material by others.
- Graphic design and marketing communication services
- Designing, implementing and servicing teleconferencing and audio visual equipment, systems and software
- Document imaging and related document storage, retrieval, and management services

"Claim" means a request or demand for payment of *damages* resulting from an *error*, and includes any *suit* resulting therefrom. A *claim* will be deemed to have been made when written notice of the *claim*, is first received by a *protected entity* or by *us*, whichever occurs first.

#### **Right and duty to defend**

We will defend *protected entities* in any *suit*, requesting covered *damages*, as more fully described in the section of this agreement entitled "Defense of Claims or Suits". We may investigate and settle, at *our* discretion, any *claim* or *suit*.

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#### **Exclusions – What This Agreement Will Not Cover**

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##### **Bodily injury**

We will not cover damages for *bodily injury*.

##### **Emotional distress**

We will not cover damages for *emotional distress*.

**Personal injury**

We will not cover *damages* for *personal injury*.

**Advertising injury**

We will not cover *damages* for *advertising injury*.

**Property damage**

We will not cover *damages* for *property damage*. However, this exclusion will not apply to the loss of use of tangible property that is not physically damaged when the loss of use results from the failure of *your* electronic products, software or *computer services* to live up to *your* warranties, representations or promises.

**Professional services**

We will not cover *damages* arising from the performance of or failure to perform any other professional services, even when those services are incorporated into *your* electronic products, software or *computer services*. This includes professional services such as those performed by architects, surveyors, health care providers, accountants, and lawyers.

**Public Access to Content Material**

We will not cover *damages* arising out of *content material* which is input, published, or posted on your “Home Page”, or your area of the Internet or Worldwide Web, including, but not limited to, “chat lines” or “bulletin boards” or “discussion areas”, or other similar areas where input is or can be received from the public at large and you have no prior knowledge as to the source of the content material. Content material means any image, picture, word or words, data, code, or any other input whose source is from the public at large and not controlled by *you*.

**Obligations to employees**

We will not cover *damages* for any obligations of any *protected entity* under workers compensation, disability benefits, unemployment compensation, or any similar laws.

**Claims by protected entities**

We will not cover any *claim* brought by a *protected entity* against another *protected entity*.

**Intentional acts**

We will not cover *damages*, which result from an act or failure to act, which the *protected entity* knew, might result in a *claim*. Such circumstances include, but are not limited to, withdrawal of an electronic product, software or *computer service* from the market; or discontinuation of support for an electronic product, software or *computer service*.

**Dishonest acts**

We will not cover *damages* arising from the dishonest, fraudulent, criminal, malicious or reckless act or omission of any *protected entity* whether acting alone or in collusion with anyone else.

**Violation of trade law**

We will not cover *damages* arising from any alleged or actual violation of securities, antitrust, restraint of trade, unfair trade practice, or other consumer and/or competitive protection statute.

**Intellectual property**

We will not cover *damages* arising from actual or alleged infringement of any intellectual property rights, including copyright, patent, trade secrets, trademark, trade name, trade dress, or other intellectual property rights, privileges, or laws.

**Discrimination**

We will not cover *damages* arising out of discrimination based on race, color, religion, sex, age, gender, sexual orientation, disability, handicap, pregnancy, national origin or ethnicity.

**Bankruptcy**

We will not cover *damages* arising out of the bankruptcy or insolvency of any *protected entity*.

**Liability of others**

We will not cover *damages* for liability of others any *protected entity* assumes under any contract or agreement unless the *protected entity* would have had the liability in the absence of such contract or agreement.

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**Warranties, representations and promises**

We will not cover *damages* for return or refund of all or any part of payments made to *you* by *your* customers. Also, *we* will not cover costs and expenses *you* incur to comply with any warranties, representations or promises for *your* electronic products, software or *computer services*, including repair or replacement of defective materials or workmanship. Nor will *we* cover costs *you* incur associated with system modification, product re-design, correction of product errors, and product recall, withdrawal or inspection.

**Penalties, liquidated damages, or cost guarantees**

We will not cover *damages* for the payment of liquidated *damages* or penalties *you* agreed to pay *your* customer in the event of incidents such as late delivery. *We* also will not cover *damages* resulting from the fact that *you* exceeded any cost guaranties or estimates.

**Other liability protection**

We will not cover claims that are covered under any other Liability Insurance Policy.

**Pollution**

As stated in the Technology Common Policy Rules *we* will not cover any *claims* excluded in the *Pollution* exclusion, even if caused by or contributed to by an *error*.

**Nuclear energy liability**

As stated in the Technology Common Policy Rules, *we* will not cover any *claims* excluded in the Nuclear Energy Liability exclusion, even if caused by or contributed to by an *error*.

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**Defense of Claims or Suits**


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We will have the duty to make only the payments shown below in connection with any *suit* *we* defend.

Each payment of *claims expense* reduces the *limits of coverage*. *Our* duty to pay *claims expense*, and therefore *our* duty to defend, ends when *we* have used up the *limits of coverage* that apply with any combination of payment for judgments, settlements and *claims expense*.

"Claims expense," means those payments *we* make pursuant to *our* duty to defend, as set forth below.

**Costs of defense**

When *we* control the defense of a *suit* *we* will pay all expenses *we* incur, including attorneys'

fees. But *we* will not provide or pay for separate or additional legal counsel for any *protected entity*, even where some portions of a *claim* are not covered, or may not be covered, by this agreement.

In any case, *we* will not pay for legal counsel that any *protected entity* retains without *our* written consent.

*We* have the right to control the defense of any *suit* while *we* are paying any *claims expenses*. If at any time *we* both agree, or if a court orders *you* to take over control of such defense before the applicable *limit of coverage* has been used up, *we* will reimburse *you* for reasonable attorneys' fees for the defense of covered *claims*. But *we* still will not pay more in total than the *limit of coverage* that applies.

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As soon as practicable after *we* become aware that *your limit of coverage* may be used up in defense of a *suit* *we* will do the following:

- Notify *you* of any outstanding *claims* or *suits* so that *you* can arrange to take over control of the defense, and
- Assist in the transfer of control for such defense.

While the transfer of control of the defense is taking place, *we* will take steps on *your* behalf that *we* feel are appropriate to avoid default in a *suit*, or to continue the defense of such *suit*. *You* agree that if *we* take such steps, *we* do not give up or waive any of *our* rights. *You* also agree to reimburse *us* for any *claims expense* *we* incur in excess of the *limit of coverage*.

**Bonds to release property**

*We* will pay the cost of bonds to release property of a *protected entity* that is being used to secure a covered legal obligation, but only for bond amounts within the applicable *limits of coverage*. *We* are not obligated to apply for or furnish such bonds, or to provide the collateral in support of such bond.

**Expenses incurred by a protected entity**

*We* will pay all reasonable expenses that a *protected entity* incurs at *our* request while helping *us* investigate or defend a *claim* or *suit*. But *we* will not pay more than \$250 per day for earnings actually lost by any *protected entity* because of time lost from work.

**Taxed costs**

*We* will pay all costs for covered *claims* taxed against a *protected entity* at the conclusion of a *suit*.

**Pre-judgment interest**

*We* will pay pre-judgment interest awarded on the covered portion of a judgment.

**Post-judgment interest**

*We* will pay post-judgment interest that accrues on the covered portion of a judgment. But *we* will pay only the amount of interest accruing from the date of the judgment to the date *we*:

- Pay;
- Offer to pay; or
- Deposit in court;

the covered amount.

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## Other Provisions Relating to Defense of Claims or Suits

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### Arbitration

We are entitled to exercise all of a *protected entity's* rights in the choice of arbitrators and the conduct of any arbitration proceeding.

### Special verdicts

In any *suit*, even if we are not controlling the defense, we have the right to request a special verdict in lieu of a general verdict.

### Recovery from employees

We will not use *your* Right of Recovery, as explained in the Technology Common Policy Rules, against any of *your* employees, unless we believe the employee has intentionally caused harm.

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## When This Agreement Covers

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We will cover *claims* first made against *you* while this agreement is in effect, if during the *policy period* you give us written notice of the *claim*. We will also cover *claims* first made against *you* after this agreement ends as provided in the Automatic Extended Reporting Period Section of this agreement.

Further, coverage only applies if no *protected entity* had reason to believe, at the start of the *policy period*, that it was possible that the *claim* would be made. Without limitation, such knowledge will be presumed if: a *protected entity* had received a complaint about an *error* which had caused, or foreseeable could cause, *damages*; a customer stopped paying *you*, threatened to stop paying *you*, or asked for a refund of payments; a person or entity indicated that copies of correspondence, regarding alleged *errors*, were being sent to legal counsel.

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## Where This Agreement Covers

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We cover *errors* that happen anywhere in the world, but only if the *suit* is brought within the *Coverage Territory*.

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## Who Is Insured Under This Agreement

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### Individual

If *you* are named in the Declarations as an individual, *you* and *your* spouse are a *protected entity*. But only with respect to the conduct of a business of which *you* are the sole owner.

### Partnership or joint venture

If *you* are named in the Declarations as a partnership or joint venture, *you* are *protected entities*. *Your* members, partners or co-ventures are *protected entities* only with respect to the conduct of *your* business.

No person or organization is a *protected entity* for the conduct of any current or past partnership or joint venture that is not named in the Declarations.

### Corporation or other organization

If *you* are named in the Declarations as a corporation or other organization, *you* are a *protected entity*. *Your* executive officers and directors are *protected entities*, but only with respect to their duties as *your* officers or directors. *Your* stockholders are *protected entities*,

but only with respect to their liability as *your* stockholders.

## Employees

*Your* employees, agents, and sub-contractors are *protected entities* only for work done within the scope of their employment by *you*. We will not cover *claims* or *suits* brought against *your* employees, agents, and sub-contractors by *you* or by other employees, agents, and sub-contractors.

## Automatic Additional Protected Entities

Any person or organization for whom *you* are providing *computer services* in the course of *your business activities*, is a *protected entity*, when *you* and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on *your* policy. Such person or organization is an additional insured only with respect to liability arising out of *your* ongoing *business activities* for that insured. A person's or organizations status as an insured ends when *your business activities* for that insured are completed.

## Legal representatives

We will protect the following representatives of a *protected entity*:

- The estate, legal representative or heirs of a deceased person, or
- The legal representative of a *protected entity* who is legally bankrupt or mentally incompetent;

but only in their capacity as such.

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## Newly acquired organizations

Any organization that *you* acquire or form while this agreement is in effect, other than a partnership or joint venture, is a *protected entity* if *you* own at least 51% of it.

However, no such newly acquired or formed organization is a *protected entity* under this agreement for:

- More than 120 days, or the remainder of the *policy period*, whichever is less, from the date that *you* acquire or form it, or
- *Damages* covered under any other insurance.

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## Limits Of Coverage

The limits shown in the Declarations, subject to this section, are the most *we* will pay regardless of the number of:

- *Protected entities*;
- *Claims* made or *suits* brought; or

- Persons or organizations making *claims* or bringing *suits*.

This agreement applies:

- To each *protected entity* named in the Declarations as if that person or organization were the only one named there, and
- Separately to each other *protected entity*.

However, the *limits of coverage* shown in the Declarations are shared by all *protected entities*. Also, any right or duty specifically assigned to the *first named insured* remains unchanged. We explain those rights and duties in the Technology Common Policy Rules.

#### Each claim limit

This is the most we will pay for all *claims* resulting from a single *error* or from a series of related *errors*, no matter how many *protected entities*, injured parties, or *claims* are involved. This includes all *claims expenses*.

#### Aggregate limit

This is the most we will pay for all *claims* first made during the *policy period*, including *suits* resulting therefrom. This includes *claims expenses*.

We will treat any *claims* that result from a series of related *errors*, even if they are made during more than one *policy period*, as a single *claim*. The *claim* will be subject to the *limit of coverage* set forth in the agreement in effect at the time of the first *claim* resulting from a series of related *errors*.

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#### Deductible

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The deductible is shown in the Declarations. You will be responsible for any payments, up to the amount of the deductible, for each *claim*. This includes *claims expenses*. We will only apply the deductible once for all *claims* resulting from a single *error* or from a series of related *errors*. We will then pay covered *claims* over the deductible amount, up to the *limit of coverage*. At our option we can pay all or part of the deductible to settle a *claim*. If we do, each *protected entity* agrees to repay us as soon as we notify you of the settlement.

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#### Automatic Extended Reporting Period

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An automatic Extended Reporting Period will apply only if this agreement ends because: we or you, choose to cancel or non-renew this agreement for reasons other than misrepresentation or non-payment of premium; or we renew or replace this agreement with other claims-made insurance that has a *retroactive date* later than that one shown in the Declarations.

We will provide coverage for *claims* first made within one year after this agreement ends. However, coverage under this Automatic Extended Reporting Period applies only if all of the following conditions are met:

- The *error* occurred during the *policy period*;
- The *protected entity* involved was first aware of a possible *error* during the *policy period*, or within 90 days after it ended;

- Within 90 days after the agreement ends, *you* notify *us*, in writing, of the possible *error*. Such written notice must include the following information:
  1. The actual or alleged *error* or circumstance which is the subject of a possible *claim*;
  2. Identification of the specific services rendered or product(s) failed, which gave rise to (1) above;
  3. The date(s) of such *error* or omission;
  4. The consequential damage which has or may result from such *error* or omission
  5. The identity(ies) of the *protected entities* who may be subject of the claim;
  6. The identity(ies) of the potential claimant(s);
  7. The anticipated location(s) of any such *claim*, and
  8. The circumstances by which *you* first became aware of the potential *claim*.

Coverage provided by the Automatic Extended Reporting Period will be excess over any other insurance available to *you*, whether collectible or not, whose *policy period* begins or continues after this *policy* ends, whether that insurance is primary, excess, or contingent on any basis.

*Claims* made pursuant to this Automatic Extended Reporting Period will be deemed to have been made on the last day of the *policy period* for the purposes of determining the *limits of coverage*.

The Automatic Extended Reporting Period cannot be canceled.

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## Other Insurance

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This insurance is intended to be primary, except where stated otherwise.

When this insurance and other insurance both apply to a loss on the same basis, whether that basis is primary or contingent, *we* will pay no more than *our* percentage of the total amount of insurance covering the *claim*. For example:

The *limit of coverage* under this agreement is \$1,000,000. Another insurance policy with a limit of \$500,000 also covers a *claim* covered by this agreement. The total limits of all insurance are \$1,500,000. A court requires *you* to pay *damages* of \$2,000,000. *We* would pay 67% (\$1,000,000/\$1,500,000) of the judgment, but because that share (\$1, 340, 000) is greater than our *limit of coverage*, *we* will pay only the remaining portion of *our limit of coverage*, which is a maximum of \$1,000,000.



# SENECA INSURANCE COMPANIES

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## TECHNOLOGY COMMON POLICY RULES

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These rules apply to the entire *policy*.

Whenever a word or phrase is printed in italics, that word or phrase is defined somewhere in this *policy*.

"Policy" means this entire package of insurance, bearing a single Policy Number.

"We," "us," and "our" means the company issuing this *policy*.

"You" and "your" means the persons, people and organizations named as insured in the Technology Policy Declarations.

"Protected entity" means *you* and any other person or legal entity entitled to coverage under this *policy*.

### First Named Insured

"First Named Insured" means the first insured entity shown on the Technology Policy Declarations. Only the *first named insured* has the authority and responsibility, on behalf of itself and all other *protected entities*, to:

- Pay premiums or receive refunds of premiums;
- Cancel the policy or receive Notice of Cancellation;
- Change the *policy* including, but not limited to, the addition or deletion of coverage and/or *protected entities*.

All such changes are binding on all other *protected entities*.

### The Policy Period

Coverage under this *policy* begins at 12:01 a.m., standard time, on the effective date shown on the Technology Policy Declarations. If this *policy* replaces another policy expiring on the same date this *policy* becomes effective, coverage begins at the time that the replaced policy expires. All changes to this *policy* are effective as of 12:01 a.m. on the effective date stated thereon.

Coverage under this *policy* ends at 12:01 a.m., standard time, on the expiration date of this *policy*. If all or part of this *policy* is canceled for any reason before that date, coverage will end at 12:01 a.m., standard time, on the date cancellation is effective.

"Policy period" means the period between the time coverage begins and the time coverage ends.

### Assignment And Transfers

The rights and duties of any *protected entity* under this *policy* may not be assigned or transferred without *our* written consent attached to the *policy*. However, if *you* are a person, and *you* die, *your* rights and duties will be transferred to *your* legal representative, but only while acting within the scope of duties as *your* legal representative. Until *your* legal representative is appointed, anyone having temporary custody of *your* property will have *your* rights and duties concerning that property.

**Our Right To Examine Your Records**

*You* agree to let *us* examine and audit *your* financial books and records that relate to this *policy* at any time up to 3 years after this *policy* ends.

**Inspections And Surveys**

*We* have the right, but not the obligation, to inspect *your* property and business operations during normal business hours while this *policy* is in force. By conducting such investigation, *we* do not become responsible to advise *you* or to guarantee *you* that *your* property or business operations are safe or healthful or that they conform to any laws, codes, standards or regulations. Any inspections, surveys, reports or recommendations *we* make only relate to our determination of insurability and help *us* decide what premiums to charge. *We* do not make safety inspections or undertake to perform any duty of persons or organizations that provide for the health or safety of workers or the public. This rule also applies to any organization, which makes insurance inspections, surveys, reports or recommendations for *us*.

**Premium And Audit**

This *policy* may be issued based upon estimated premiums. *You* must keep accurate records of the information *we* will need to compute *your* premium. *Your* broker can explain the type of records *we* will need. The *first named insured* agrees to send copies of these records to *us* at the end of each *policy period* - or at any other time *we* request them.

*We* will compute the earned premium *you* pay for this *policy* after the end of the *policy period* when complete information is available. If the earned premium is less than the premium *you* paid, *we* agree to return the excess premium. If the earned premium exceeds the estimated premium, *you* agree to pay that additional premium upon *our* notice to *you*. *You* will pay no less than the minimum annual premium agreed-on.

**Liberalization**

Occasionally *we* make changes in *our* standard policy forms. These changes must conform to state law and are subject to prior approval by insurance supervisory authorities in each state. If *we* make a change while *your* coverage is in force that broadens or extends *your* coverage, and the change can be added to *your policy* without increasing the premium, *you* will automatically receive the broadened or extended coverage on the day the change is effective in *your* state.

**Cancellation**

The *first named insured* can cancel this *policy* in whole or part at anytime by sending *us* a written request or by returning the *policy* to *us* with instructions specifying the date of cancellation.

*We* can cancel this *policy* in whole or in part at any time. To do so *we* will mail or deliver a Notice of Cancellation to the *first named insured* at least 60 days before coverage will end; but only 10 days before coverage will end if *we* are canceling for nonpayment of premium. *Our* notice will be mailed to the *first named insured's* last mailing address known to *us*, indicating the date coverage is to be canceled. Evidence of mailing such notice will be considered proof *you* were notified on the date of such mailing.

If this *policy* is cancelled, *we* will send the *first named insured* any premium refund due. If *we* cancel, the refund will be pro rata. If the *first named insured* cancels, the refund may be less than pro rata.

**Our Right To Recover Damages From A Third Party**

Any *protected entity* under this policy for whom *we* make a payment must preserve, and at *our* request transfer to *us*, the right to recover all or part of a loss from any other party. After a loss, each *protected entity* must do all that is possible to preserve any right of recovery

available to *us*. If *we* recover more than *we* have paid, plus the amount of *our* recovery expenses, the excess will belong to the *first named insured*.

However, *we* will not exercise *our* right to request transfer to *us*, the right to recover all or part of a loss from any other party, where such a waiver is required by a written contract signed by any *protected entity* and is related to *your business activities*.

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### **Bankruptcy**

Bankruptcy or insolvency of any *protected entity* will not relieve *us* of any obligation under this *policy*.

### **Fraud And Misrepresentation**

This *policy* is void if any *protected entity* misled *us*, hid important information from *us*, or lied to *us* about any matter when applying for this *policy*. If any *protected entity* misleads *us*, hides important information from *us*, or lies to *us* about any matter concerning a *loss*, this *policy* will not cover that *loss*. However, unintentional errors or omissions will not affect *your* rights under this *policy*.

### **Additional Definitions**

"Advertising" means statements disseminated in a publication or broadcast to numerous persons for the purpose of seeking customers or increasing sales or business.

"Advertising injury" means *injury* caused by any of the following *offenses* that arise from the *advertising* of *your* products or *your* work:

- Libel or slander;
- Written or spoken material that belittles the products or work of others;
- Written or spoken material made public which violates an individual's right of privacy;
- or
- Use of any *advertising* material, title or slogan without consent of the owner thereof.

"Bodily injury" means any harm to the physical health of others, including sickness and disease, caused by an *occurrence*. It also includes care, loss of services or death arising at any time from such harm.

"Coverage Territory" means the United States of America, its territories and possessions, Puerto Rico and Canada.

"Damages" means compensatory monetary damages. *Damages* does not include restitution, or any other demand or remedy for return of monies previously received by any *protected entity* from the claimant.

"Emotional distress" means emotional distress, mental duress, and every other mental, emotional or psychic harm to a person, which does not result from physical injury to a person.

"Injury " means *bodily injury*, medical expenses, *personal injury*, *advertising injury*, *property damage* or fire, lightning, or explosion damage.

"Limits of Coverage" means the amount of insurance coverage, which is available under a specific protection agreement, as defined in each protection agreement.

"Loss" means any *occurrence*, accident, offense, *error*, *damage*, *claim*, *injury* or *damage*, or *suit*.

“Network Security Violation” means a breach of security, whereby an unauthorized person or entity, gains access to electronic data or other electronic content such as sounds or images, **and** damages result from such data or other electronic content being modified, destroyed, or disclosed. A *network security violation* includes the unauthorized introduction of a computer virus or other malicious code which affects such data or other electronic content **and** results in *damages*.

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

"Personal injury" means *injury* or *damages* caused by any of the following offenses that arise from *your business activities*:

- False arrest, detention, or imprisonment;
- Malicious prosecution;

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- Wrongful entry or wrongful eviction or invasion of the right of private occupancy of a room, dwelling, or premises that a person occupies by or on behalf of its owner, landlord, or lessor;
- Written or spoken material made public, regardless of the media used, which disparages a person or organization, or which violates an individual’s right of privacy, except that this will not apply to *damages* resulting from *network security violations*.

"Property damage" means physical damage to tangible property of others, including all resulting loss of use of that property; or loss of use of tangible property of others that is not physically damaged, but in either case, caused by an *occurrence*.

"Suit" means a civil proceeding in which *damages* are alleged. This includes arbitration proceedings for *damages*.

"Tort liability" means liability imposed by law in the absence of any contract or agreement.

"Your products" means any goods or products, other than real property, that *you* or others trading under *your* name manufactured, sold, handled, distributed or disposed of, including containers, materials, instructions, warnings, parts or equipment provided in connection with *your* goods or products, or those of any person or entity whose business or assets *you* have acquired. It includes warranties or statements made about the fitness, quality, safety, durability or performance of *your products*.

But *we* will not consider *your products* to include:

- Products that are still in *your* physical possession;
- Property rented to others; or
- Property you have not sold, but which *you* allow others to use.

"Your work" means work or operations performed by *you* or on *your* behalf, and materials, instructions, warnings, parts or equipment furnished in connection with such work or operations. It includes warranties or representations made at anytime with respect to the fitness, quality, safety, durability or performance of work or operations performed by *you* or on *your* behalf, and materials, parts or equipment furnished in connection with such work or operations.

#### **Titles And Headings**

The titles and headings in this *policy* are included solely as a reference for convenience, and do not affect the scope of coverage.

#### **Changes**

This *policy* constitutes the entire agreement between us concerning the insurance provided by *us*. This *policy* can only be changed by a written amendment made a part of the *policy* and signed by one of *our* authorized representatives.

#### **Choice Of Law And Conformance**

This policy shall be interpreted according to the law of the state where this *policy* is issued, which is presumed to be the state shown on the Technology Policy Declarations as the mailing address of the *first named insured*. Any terms of this *policy* that conflict with the law of such state are automatically amended to conform to the law of that state.

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#### **COMMON POLICY EXCLUSIONS**

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Except as expressly set forth to the contrary in any protection agreement, the following exclusions apply to the entire *policy*.

##### **Pollution.**

*We* will not cover *loss* that arises from the actual, alleged or threatened discharge, dispersal, release, leakage, seepage, migration or escape of *pollutants* at or from:

- Any premises *you* own, rent, lease or occupy. It also includes premises *you* no longer own, rent, lease or occupy.
- Any site or location used, or being used, by or for *you* or others for the handling, storage, disposal, processing or treatment of waste; or
- Any site or location on which work is being performed by or for *you* when *pollutants* are brought on or to the site in connection with such work or the work is to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*.

*We* will not cover any *loss* arising from those *pollutants*, which are at any time transported or towed, handled, stored, treated, disposed of, or processed as waste by or for any *protected entity* or any person, or organization for which a *protected entity* is legally responsible. Nor will *we* cover any *loss*, including any cost or expense that results from any order or demand by anyone that any *protected entity* test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in anyway respond to or assess the effects of *pollutants*.

We also will not cover any *loss* arising from those *pollutants* which are at any time being transported or towed by an *automobile*, including loading and unloading or while being stored, disposed of, treated or processed in or on an *automobile*. "Automobile" means a land motor vehicle, trailer or semitrailer designed for travel on public roads.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, and *waste*.

"Waste" means materials to be disposed of, destroyed, recycled, reconditioned or reclaimed.

"Pollution" means the actual, alleged or threatened discharge, dispersal, release or escape of pollutants.

"Your premises" means any premises *you* owned, rented, leased or occupied at any time.

"Your work site" means any site or location on which work is being performed by or for *you* when *pollutants* are brought on or to the site in connection with such work; or if the work is to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*.

### **Nuclear energy liability.**

We will not cover any *loss*, or any portion thereof, arising from radioactive, toxic, explosive or other hazardous properties of *nuclear material*, *nuclear waste* or *spent fuel*.

"Nuclear material" means source material, special *nuclear material* or by-product material as defined under the federal Atomic Energy Act.

"Nuclear facilities" means any of the following:

- *Nuclear reactors*;
- Nuclear enrichment plants;
- Nuclear fuel or *spent fuel* handling or processing plants;

- A location prepared or used for handling, storage or disposing of *waste*;
- A location containing more than 25 grams of plutonium or uranium 233 combined, or more than 250 grams of uranium 235.

"Nuclear waste" means *waste* from any of the first three types of *nuclear facilities* named above which contains by-product material.

"Nuclear reactor" means anything that can be used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Spent fuel" means any fuel element or component, whether solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.

We also will not cover any liability for which a *protected entity* is covered under a Nuclear Energy Liability Policy issued by a group such as:

- The American Nuclear Insurers;
- The Nuclear Energy Liability Insurance Association;
- The Mutual Atomic Energy Liability Underwriters; or
- The Nuclear Insurance Association of Canada.

Nor will *we* cover liability that would have been covered by a policy from a group listed above if its limit of coverage had not been used up.

This exclusion applies whether or not the *loss* is based on liability assumed under any contract or agreement.

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**DUTIES IN THE EVENT OF ANY POTENTIALLY COVERED LOSS**

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If *you* are aware of a possible *error* or *claim*, *you* agree to notify *us* as soon as possible, even if a *claim* has not been made. In addition, *you* must:

1. Notify the police if a law may have been broken;
2. Notify *us* or *your* broker about what happened. *We* must be provided with details surrounding the actual or alleged *error* or circumstance which is the subject of a possible *claim*, the identity of *protected entity(ies)* involved, and the time and place of the actual or alleged incident;
3. Send or deliver to *us* copies of all demands or legal documents if someone makes a *claim* or *suit*;
4. Cooperate with *us* in making any investigation into the *claim* or *loss* that *we* deem necessary, including answering *our* questions and making available records and individuals with knowledge of the *claim* or *loss*. Also, *you* and any involved *protected entity* must cooperate with *us* in securing and giving evidence, attending hearings and trials, and obtaining the attendance of witnesses;
5. Not pay out any money or assume any financial obligation without *our* consent.

**Legal Action Against Us**

No one can sue *us* to recover under this *policy* unless there has been full compliance with all the terms and conditions of this *policy*.